



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

April 29, 1952

Hon. Bascom Giles, Commissioner  
General Land Office  
Austin, Texas

Opinion No. V-1438

Re: Legality of issuing a  
patent on the Iredell  
Redding Survey under  
the submitted facts.

Dear Sir:

Your request for opinion reads in part as  
follows:

"We desire the opinion of your  
office regarding the legality of the  
issuance of patent on the Iredell Redding  
Survey, being Robertson First Class File  
527 $\frac{1}{2}$ , Abstract No.677, situated in Navarro  
County, Texas.

"A certificate of facts is enclosed  
which will state the fact situated in-  
volved here . . . Due to certain notations  
appearing on the file jacket and references  
there made, it appears doubtful that such  
patent may issue.

"Your opinion is necessary on account  
of the conflicting views concerning the is-  
suanace of patent. Please advise whether  
patent can legally issue. The question is  
not the subject of any pending or proposed  
litigation so far as is known to this of-  
fice."

The certificate of facts accompanying your re-  
quest relates:

"That on May 1, 1841, the Traveling Board of Land Commissioners, appointed by an Act of Congress of the Republic of Texas, investigated the records of the different Boards of Land Commissioners East of the Brazos River, reported that it investigated the claim of Iredell Redding, by virtue of First Class Headright Certificate No. 136, issued to the said Iredell Redding, by the Board of Land Commissioners of Houston County, and rejected same, it appearing to their satisfaction that such Certificate was not legal and genuine;

"That on December 16, 1840, Iredell Reding made verified affidavit that he was the owner of a claim for one league and one labor of land, issued by the Board of Land Commissioners of Houston County in the name of Iredell Redding, per order of the District Court of said County, dated March 2, 1838 and numbered 136, and that he had never sold, alienated or transferred same in any manner, that he delivered said Certificate to Richard Sparks, on March 27, 1838 to locate and have surveyed, and that a short time thereafter, the said Sparks was killed by the Indians, 'on Trinity as is supposed, that the said Certificate, as he believes, was lost at that time and that since lost he has neither known or heard of same since that time;'

"That the District Court of Houston County in the February term of 1838 in a case styled, Iredell Redding vs. the Land Commissioners of Houston County, 'ordered by the Court that the plaintiff be allowed one league and one labor of land agreeable to the verdict of the jury;'

"That on June 12, 1843, Iredell Reding made verified affidavit that he had placed in the hands of Richard Sparks, his Headright Certificate for one league and one labor of land being No. 136, granted to him by the Board of Land Commissioners of Houston

County, and other Certificates, and that he had not alienated or transferred same in any manner, and that said Certificates had been lost and since lost, he had neither heard of same and had advertised for same in accordance with law, and enclosed a newspaper clipping to such effect, advertising the loss of said Certificates, and said affidavit and newspaper clipping, along with the instruments recited in the two preceding paragraphs, are now filed in the General Land Office;

"That on April 25, 1850, William M. Lane, District Surveyor of Robertson Land District, surveyed a tract of 17,433,339 square varas of land for Iredell Reding, by virtue of Duplicate Certificate No. 1/100, issued by the Commissioner of the General Land Office June 12, 1843 for one league and one labor of land, and compiled field notes of same, which were recorded in the office of the District Surveyor of Robertson Land District, and then transmitted to the Land Office, where they were received and filed, and said field notes now bear the following endorsement, on the back thereof, 'Cancelled by corrected field notes;'

"That on October 10, 1850, William M. Lane, Deputy Surveyor of Robertson Land District, surveyed a tract of 8,198,880 square varas of land in what is now Navarro County, for Iredell Reding, by virtue of said Duplicate Headright Certificate No. 1/100, and compiled field notes of same, which were recorded in the office of the District Surveyor of Robertson Land District, and then transmitted to the Land Office, where they were received and filed and were approved as correct on February 9, 1852;

"That on June 16, 1849, Iredell Reding and wife, Nancy, conveyed his Duplicate Headright Certificate for one league and one labor of land, as issued by Thomas William Ward, Commissioner of the General Land Office,

on June 12, 1843, to William M. Love, by instrument which is now filed in the General Land Office;

"That on November 18, 1859, J.M. Eliot, County Surveyor of Navarro County resurveyed the large survey made by virtue of said Duplicate Certificate 1/100, and compiled corrected field notes thereof, showing same to consist of 17,402,619 square varas of land, which corrected field notes were recorded in his office and then transmitted to the Land Office, where they were received and filed December 15, 1859, and said field notes now bear the following penciled endorsement, 'This survey does not agree with the surrounding surveys and appears to conflict with John White ptd.survey, July 22/87. C.W. Pressler;'

"That Section 2 of Chapter 84, of an Act passed February 13, 1854, (4 Gam. 137) states in part, 'That said Commissioner be, and he is hereby authorized and required to issue a patent to Iredell and Nancy Reding, for one league and labor of land, on the location and survey made by virtue of said Iredell's Headright Certificate;'

"That the file wrapper in the Land Office containing the papers pertaining to the said Iredell Redding's Surveys in Navarro County, bears the following endorsement, 'Certificate rejected by the Traveling Board - the Legislature cannot legalize it, though they have passed an Act for that purpose, - see Special Acts of 1854, Page 140. See also Section 2, Art.10, State Constitution;'

"That by an Act approved February 8, 1860 (5 Gam.196) the Legislature of the State of Texas, stated that certain described land lying in Navarro County on the waters of

Richland Creek, comprising one league and one labor of land, 'is hereby donated to said Wm. M. Love, and all the rights, title and interest to the State in and to said land is hereby relinquished to said Wm. M. Love, and said land is embraced in two surveys;'

"That the back of the field notes of the smaller of the Redding Surveys in Navarro County bears the following endorsement, 'Received Government dues upon the within field notes amounting to \$4.95 specie from W.M. Love, January 12, 1855. F. W. Moore, Receiving Clk.,' and the original field notes covering the larger survey bear the following endorsement, 'Received \$9.40 specie in full, of Government, upon the within field notes from Wm. M. Love, Jany. 12, 1855. Fred W. Moore, Recvg. Clerk;'

"That J.H. Walker, Commissioner of the General Land Office advised Mr. W. L. Thomas of Houston, Texas, in a letter dated November 29, 1929, that subsequent to the passage of the Act of February 13, 1854, the General Land Office took the view that the Legislature could not validate the Redding Certificate, in view of the provisions of Section 2, Article 11 of the Constitution then in force, and further advised that the Act of February 8, 1860, relinquished said land to Wm. M. Love, noting that said Act made no provisions for the patenting of the land and statd that such Statute seemed to confer title and there would be no necessity for issuing a patent, and, in fact, no authority was given this Department to issue one, stating that it would appear that the Statute last mentioned confers title, 'or rather takes title out of the State;'"

An Act of the 4th Congress of the Republic of Texas, R.S.1840, at page 139, provides in part:

"Sec.1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That there shall be elected by joint vote of both Houses of Congress, three Commissioners, whose duty it shall be to visit each county in the Republic, the county seat of which is east of the Brazos river; and, also, three other Commissioners, whose duty it shall be to visit each county, the county seat of which is west of the Brazos river; and, in conjunction with three County Commissioners, to be elected in like manner by Congress, from the respective counties for which they are to act, to inspect the records of the Boards of Land Commissioners, and ascertain by satisfactory testimony what certificates for land have been issued by the respective boards to legal claimants, and report as soon thereafter as practicable to the Commissioner of the General Land Office, such certificates as they find to be genuine and legal setting forth in their reports the number and date of the certificates, the quantity of land, and the name of the person to whom issued; in which report, at least two of the General Commissioners and two of the County Commissioners must concur.

"Sec.4. Be it further enacted, That it shall be the duty of the Commissioner of the General Land Office, upon the return of a survey made in accordance with law, and by authority of any certificate that shall be returned as genuine and legal by the Commissioners appointed by this act, and as required by this Act, to make out and deliver to the rightful owner a patent for the same, unless it shall appear from the records of his office, or from information, on oath, given him, that there is some illegality in the claim; in such case he shall refer the matter to the

Attorney General, whose decision in writing shall be sufficient authority for him to issue or withhold the patent as the case may be.

"Sec.5. Be it further enacted, That the Commissioner of the General Land Office is hereby prohibited from issuing a patent upon any survey that shall not have been or may hereafter be made by authority of a certificate returned as genuine and legal by the Commissioners appointed by this Act, or by authority of a warrant issued for military services, after the same shall have been presented to, and approved by the Secretary of War, or by authority of a certificate issued by special act of Congress; and any patent issued contrary to the provisions of this act, shall be null and void, and the Commissioner of the General Land Office issuing a patent contrary to the provisions of this act, shall be deemed guilty of a high misdemeanor, and on conviction thereof before the District Court, shall be fined in a sum of not less than five thousand dollars, unless the person claiming such patent shall produce to the Commissioner of the General Land Office, the judgment or decree of a District Court of this Republic, from which no appeal was taken within the time prescribed by law, that he is justly entitled to the amount of land under the Constitution and laws of this Republic."

The Commissioners elected under the above statute examined the certificate of Iredell Redding and disapproved it.

The General Land Office issued a duplicate certificate, No.1/100, to Iredell Redding for the lost certificate Number 136. The duplicate certificate, issued in 1843, could confer no rights other than those given by the original certificate. Texas Land and Mortg.Co. v. State, 23 S.W. 258 (Tex.Civ.App.1892, error ref.).

If Redding acquired no right by the issuance of the duplicate certificate, his conveyance of this certificate to William M. Love would vest no right in

Love. Nor would the surveys made for Love under the duplicate certificate and his payments of dues create any right in him.

Section 2 of Article XI of the Constitution of Texas (1845) provided:

"Sec.2. The District Courts shall be opened until the first day of July, one thousand eight hundred and forty-seven, for the establishment of certificates for headrights, not recommended by the Commissioners appointed under the act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants; and the parties suing shall produce the like proof, and be subjected to the requisitions which were necessary, and were prescribed by law to sustain the original application for the said certificates, and all certificates above referred to, not established or sued upon before the period limited, shall be barred, and the said certificates, and all locations and surveys thereon, shall be forever null and void -- and all relocations made on such surveys, shall not be disturbed until the certificates are established as above directed."

Neither Redding nor Love having gone into court prior to July 1, 1847, to establish the validity of the headright certificate, their claim was cut off by the terms of the Constitution, and no patent could be issued under the headright certificate.

Section 2 of an Act of the 5th Legislature, 1854, chapter 84, page 137, provided in part:

"That said Commissioner be, and he is hereby authorized and required to issue a patent to Iredell and Nancy Reding, for one league and labor of land, on a location and survey made by virtue of said Iredell's headright certificate."

In view of the above provision of the Constitution of 1845, we are of the opinion that this Act of 1854 was unconstitutional.



Chapter 133, Acts of the 8th Legislature, 1859, page 156, provides in part:

"An Act relinquishing the right of the State to certain lands therein named to William M. Love of Navarro County, Texas.

"Section 1. Be it enacted by the Legislature of the State of Texas, That the following described land lying in Navarro County, Texas, on the waters of Richland creek, comprising one league and labor of land is hereby donated to said Wm. M. Love and all the rights, title, and interest of the State in and to said land is hereby relinquished to said Wm.M. Love, said land is embraced in two surveys, the first of which is bounded and described as follows: . . .

". . . And the State of Texas hereby relinquishes all her right and title in and to the above described land to the said William M. Love, of Navarro County, Texas."

This grant by the Legislature, if valid, would be sufficient in itself to pass full title out of the State to the subject land and vest it in William M. Love, and the issuance of a patent thereon would be unnecessary and without effect. On the other hand, if the legislative grant were invalid, then no title passed to William M. Love by virtue thereof, and the issuance of a patent on these lands would be unauthorized. It is our opinion, therefore, that the Commissioner of the General Land Office is not authorized to issue a patent on the above land.

#### SUMMARY

The Commissioner of the General Land Office has no authority to issue

a patent on land which was the subject of an express grant by the Legislature in 1859, regardless of the validity or invalidity of the legislative grant.

APPROVED:

Yours very truly

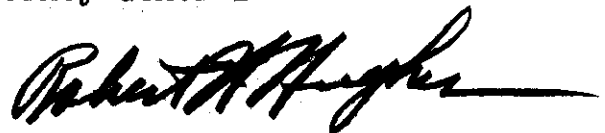
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